



**CITY OF SUNNYVALE  
REPORT  
Administrative Hearing**

**June 30, 2004**

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**SUBJECT:**           **2004-0330** – Application for a 9,375 square foot site located at **1351 Pauline Drive** in an R-0 (Low Density Residential) Zoning District. (APN: 309-07-008)

Motion               Variance from SMC (Sunnyvale Municipal Code) section 19.34.030 to allow a 10-foot and 10-inch front yard setback where twenty feet is required.

**REPORT IN BRIEF**

**Existing Site**           Single-Family Home

**Conditions**

**Surrounding Land Uses**

North               Single-Family Homes

South               Single-Family Homes

East                Single-Family Homes

West                Single-Family Homes

**Issues**               Front Property Line Location  
Visual Compatibility

**Environmental Status**       A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

**Staff Recommendation**       Denial



**PROJECT DATA TABLE**

	<b><u>EXISTING</u></b>	<b><u>PROPOSED</u></b>	<b><u>REQUIRED/ PERMITTED</u></b>
<b>General Plan</b>	Low Density Residential	Same	N/A
<b>Zoning District</b>	R-0	Same	N/A
<b>Lot Size (s.f.)</b>	9,375	Same	6,000 min.
<b>Gross Floor Area (s.f.)</b>	2,675 (includes a 332 s.f. storage structure and a 57 s.f. garden deck)	Same	N/A
<b>Lot Coverage (%)</b>	28.5%	Same	45% max.
<b>Floor Area Ratio (FAR)</b>	28.5%	Same	Up to 45% allowed without PC approval
<b>Building Height (ft.)</b>	15 ft.	Same	30 ft. max.
<b>No. of Stories</b>	1	Same	2 max.
<b>Setbacks (facing prop.)</b>			
★ • <b>Front</b>	20 ft. (to house)	10'-10" (to post of proposed structure)	20 ft. min.
• <b>Left Side</b>	13 ft., 21'-6" total	Same	4 ft. min., 12 ft. total
• <b>Right Side</b>	8'-6", 21'-6" total	Same	4 ft. min., 12 ft. total
• <b>Rear</b>	8 ft. to garage 3 ft. to storage structure (existing legal nonconforming)	Same	10 ft. min.

★ Starred and shaded items are deviations from the Zoning Code.

## **ANALYSIS**

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### **Background**

**Previous Actions on the Site:** There are no previous planning applications related to the subject site. This property was annexed from the County in 1972.

A complaint addressing the location and design of the proposed structures was made to Neighborhood Preservation on October 8, 2003, prior to submittal of the building permit application. The applicant applied for a building permit at the One-Stop Permit Center (the counter) on October 21, 2003. The building permit was issued at the counter that same day and approved on December 1, 2003 following final inspection of the structures. Construction was underway when the building permit was issued.

### **Description of Proposed Project**

The applicant is requesting a Variance from the required front yard setback to allow two accessory structures, both of which are attached to the front of the house. For the purposes of this report, the two structures will be referred to as the patio and the garden deck.

The patio is triangular-shaped with a wood trellis roof, wood posts and wood railings. The deck of the patio is 12 inches in height and extends 12 ft. from the wall of the house. The front setback to the patio is 10'-10" as measured from the front property line to the closest wood post.

The garden deck extends in front of the converted garage and is contiguous with the patio. It is approximately 2 ft. high and 3 ft. deep, and also has wood posts and railings. It has steps that extend approximately 2'-6" into the driveway. The setback from the front property line to the garden deck is approximately 17 ft. The roof of the house was extended 3 ft. to cover the garden deck. SMC Section 19.12.130 (12) states that a structure with a roof that is more than 50% solid must be counted as lot coverage. Per this requirement, the garden deck adds 57 square feet of floor area to the house.

Without the accessory structures, the front setback to the house would be 20 ft., which would meet the front setback required by code for the R-0 Zoning District.

**Environmental Review**

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemptions include minor additions to existing facilities.

**Variance**

**Use:** The proposed structures are used as a front patio and a decorative element for gardening and landscaping.

**Site Layout and Architecture:** The subject site has a one-story house with a detached two-car garage located in the left side of the rear yard. A 332 square foot storage structure is attached to right side of the garage. The rear setback to the storage structure is 3 feet, and the rear setback to the garage is 8 feet. Both are legal nonconforming structures; the property was located on county land at the time of their construction. The property was annexed by the City of Sunnyvale in 1972.

The proposed structures are attached to the front of the house. The front setback is 10'-10" as measured from the front property line to the closest wood post. The setback from the front property line to the house is 20 ft. A 20 ft. minimum front yard setback is required in the R-0 Zoning District.

Both structures are made of wood and have been stained to complement the colors of the exterior walls and trim of the house. The house is stucco with wood trim. The materials and colors of the structures appear generally compatible with the house, although design accents, such as paint to match the trim on the house, could improve the compatibility. The primary concern with the design of the structures is their scale relative to the house and homes on surrounding properties. The patio in particular is somewhat out of scale in terms of height and depth. If the Variance is granted, staff is recommending a Condition of Approval to modify the structure improve its compatibility with the house and the neighborhood.

The following Guidelines were considered in the analysis of the project site design and architecture.

<b>Sunnyvale Single Family Home Design Techniques</b>	<b>Comments</b>
<i>3.1 Neighborhood Patterns Respect neighborhood home orientation and setback patterns.</i>	The proposed structures encroach into the required front yard setback, varying from the uniform setbacks along the street front.

<b>Sunnyvale Single Family Home Design Techniques</b>	<b>Comments</b>
<i>3.3 Entries Design entries to be in scale and character with the neighborhood.</i>	While the design of both accessory structures is appealing, they appear out of scale with the house.
<i>3.10 Accessory Structures Relate the design of accessory structures to those of the main structure.</i>	In addition to reducing the bulk of the accessory structures, design compatibility with the house could be improved, perhaps by adding accents such as paint to match the trim of the house.

**Staff Discussion:** As noted earlier, the City of Sunnyvale annexed the subject site from Santa Clara County in 1972. The original lot lines were established according to county requirements. With the annexation, new lot lines were established, but are not clearly shown on the parcel map (the property line location must be calculated using the width of the right-of-way shown on the parcel map).

There is no sidewalk on the street; landscaping begins behind a rolled curb. Before annexation, the front property line was located at the back of the rolled curb. The original front setback (measured from the back of the rolled curb to the house) was approximately 29'-6". After annexation, the new front property line was established 9'-6" from the back of the rolled curb.

Because the new property line is not shown on the parcel map for the property, oversights by both the applicant and the Planning Division were made in the initial review of the plans submitted for a building permit. The plans showed structures that would meet the required 20 ft. setback, as measured from the back of the rolled curb. If accessory structures meet code requirements, it is commonplace for the Planning Division to approve them at the counter as part the City's streamlined process. A building permit was issued at the counter with the understanding that the structures met setback requirements.

Upon further research, which was prompted by an interested party's continued contact with Neighborhood Preservation, the location of the front property line was confirmed to be 9'-6" from the back of the rolled curb, rendering the structures nonconforming with a front setback of 10'-10".

Staff discussed options for modifying the structures to meet code requirements with the applicant, such as removing the wood posts and reducing the depth of the trellis roof to 2 ft. (so that it extends no more than 2 ft. from the house), but the applicant wished to move forward with the Variance application as is.

To grant a Variance, three findings must be made as shown in Attachment 1. The history of the case and the design of the structures were carefully considered in the analysis. However, staff was unable to make the findings primarily because no property restrictions related to the lot size, shape or topography could be identified. The subject lot is 9,375 square feet, which exceeds the minimum lot size of 6,000 square feet required in the R-0 Zoning District. With a rear yard setback from the house of 46'-9", it would be possible to locate accessory structures in the rear yard (although it is understood that the garden deck in particular was designed to enhance the appearance of the front of the house).

### **Transportation Impact Fee**

A transportation impact fee is not required for this project.

### **Compliance with Development Standards**

With the exception of the front yard setback, the proposed project complies with all applicable development standards.

### **Expected Impact on the Surroundings**

There is a minor visual impact on the character of the neighborhood because no other structures of this kind exist on surrounding properties. However, no significant negative impact on surrounding properties is expected.

### **Findings, General Plan Goals and Conditions of Approval**

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Staff was not able to make the required Findings based on the justifications for the Variance (Attachment 1). However, if the Administrative Hearing Officer is able to make the required findings, staff is recommending the Conditions of Approval (Attachment 2).

- Findings and General Plan Goals are located in Attachment 1.
- Conditions of Approval are located in Attachment 2.

### **Fiscal Impact**

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No fiscal impacts other than normal fees and taxes are expected.

### **Public Contact**

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One member of the public has been in contact with staff over the course of this case. A letter outlining the history of the case and expressing concerns related

to the front setback and the design of the structures was submitted to the Planning Division for inclusion in this report (see Attachment 6).

<b>Notice of Negative Declaration and Public Hearing</b>	<b>Staff Report</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>• Published in the <i>Sun</i> newspaper</li><li>• Posted on the site</li><li>• 9 notices were mailed to adjacent property owners and one interested party</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City of Sunnyvale's Website</li><li>• Provided at the Reference Section of the City of Sunnyvale's Public Library</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City's official notice bulletin board</li><li>• City of Sunnyvale's Website</li><li>• Recorded for SunDial</li></ul>

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**Alternatives**

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1. Deny the Variance.
2. Approve the Variance subject to the conditions listed in Attachment 2.
3. Approve the Variance with modified conditions.

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**Recommendation**

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Alternative 1.



Prepared by:

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Christine Cannizzo  
Project Planner

Reviewed by:

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Diana O'Dell  
Senior Planner

Attachments:

1. Recommended Findings
2. Recommended Conditions of Approval
3. Site Plan
4. Site Photos
5. Background Information from the Applicant
6. Letter from other interested party

### **Recommended Findings - Variance**

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1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity and within the same zoning district.

Although the history of this case has been carefully considered, staff is unable to make this finding because the house meets the required 20 ft. setback without the accessory structures, and the lot, which exceeds the minimum required lot size of 6,000 square feet by 3,375 square feet, has ample space in the rear yard for the addition of structures that would meet code requirements.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district.

Staff was not able to make this finding. While the design of both accessory structures is appealing, they appear out of scale with the house. In addition, the design compatibility with the house could be improved, perhaps by adding accents such as paint to match the trim of the house.

3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

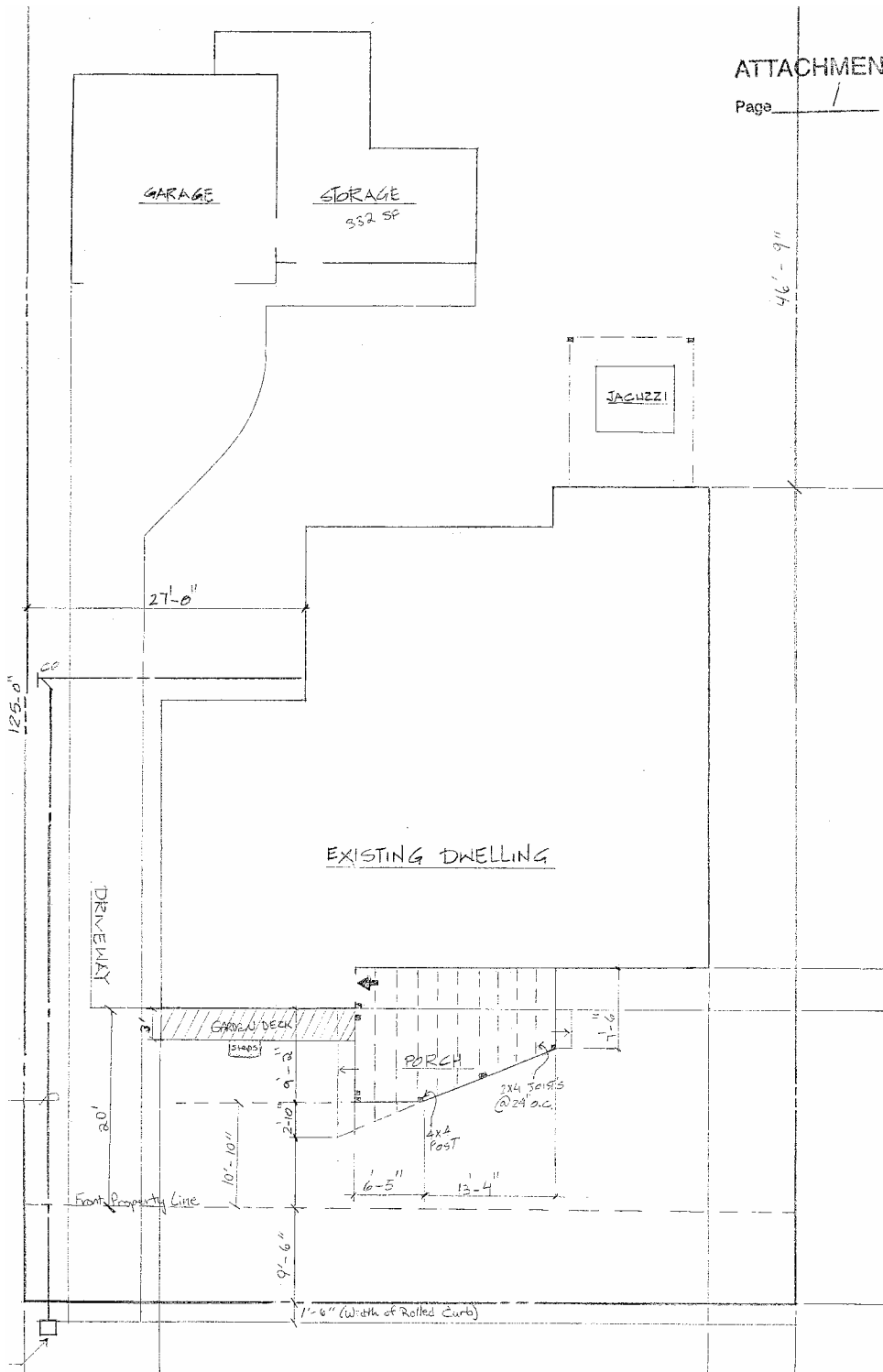
Staff is unable to make this finding because other opportunities for the addition of accessory structures exist on the site. Without identification of restrictions such as lot size or shape, staff believes that the intent and purpose of the ordinance would not be served.

**Recommended Conditions of Approval - Variance**

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In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

1. Modify the accessory structures to improve their compatibility with the existing house. Modifications shall be reviewed and approved by the Director of Community Development prior to commencement of any work on the structures.



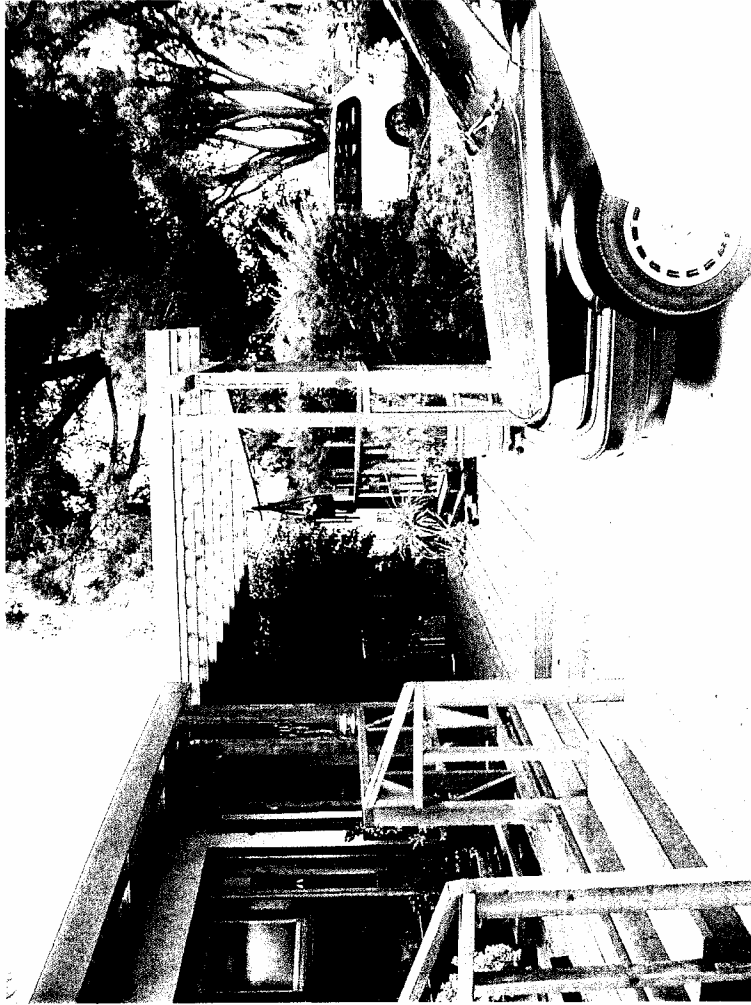
ATTACHMENT 4  
PAGE 1 OF 3

SITE PHOTOS



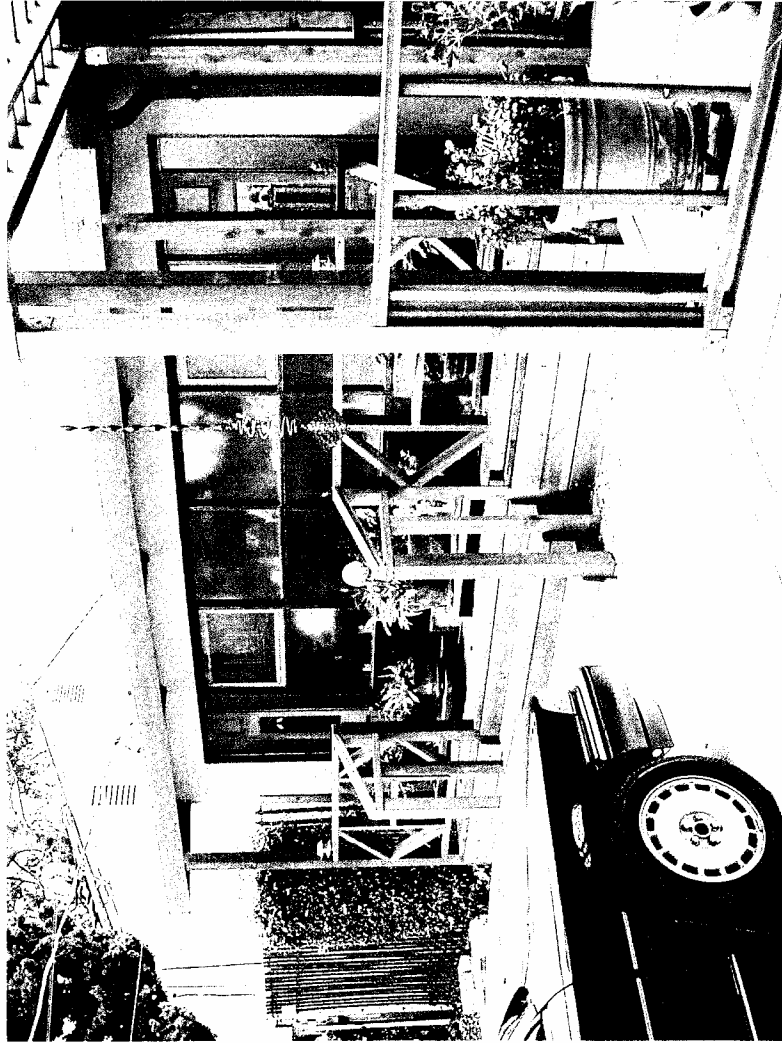
ATTACHMENT 4  
PAGE 2 OF 3

PATIO



ATTACHMENT 4  
PAGE 3 OF 3

GARDEN DECK



Robert L. Boco, Esq.  
February 25, 2004  
Page Four

ATTACHMENT 5  
Page 1 of 17

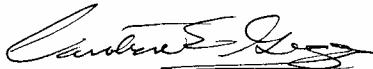
In reliance on the City's ongoing written and oral representations and assurances that the Hudsons could build their porch and trellis and that the project was in compliance with the City's ordinances, the Hudsons have expended more than ten thousand dollars (\$ 10,000.00). This amount does not take into account the Hudson's own considerable contributions of labor and time, including the time-consuming visits and consultations with City employees, and now their attorney's fees.

The foregoing facts clearly indicate that the City is attempting to deprive the Hudsons of their property rights without due process. Under the doctrine of vested rights, which is grounded in constitutional protection of property of deprivation without due process of law, when a permittee has undertaken substantial construction and incurred liabilities in reliance on the permit, the right to the permit and the unauthorized use become immunized from impairment or revocation by subsequent governmental actions. *Highland Development Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 169, 186. This potential deprivation of the Hudson's property without due process is a very serious matter and they are prepared to take any actions that may be necessary to protect their property interest.

Please contact me as soon as conveniently possible at (925) 946-1400 so that we may determine whether the City is amenable to discussions to resolve this matter. In the meantime, I am requesting the City's assurances that neither Steve Lynch nor anyone else at the City harass or make unreasonable, arbitrary, or illegal demands of the Hudsons relating to this matter.

Sincerely,

STERNBERG & COAD-HERMELIN LLP



CAROLINE E. GEGG

attachments A through F

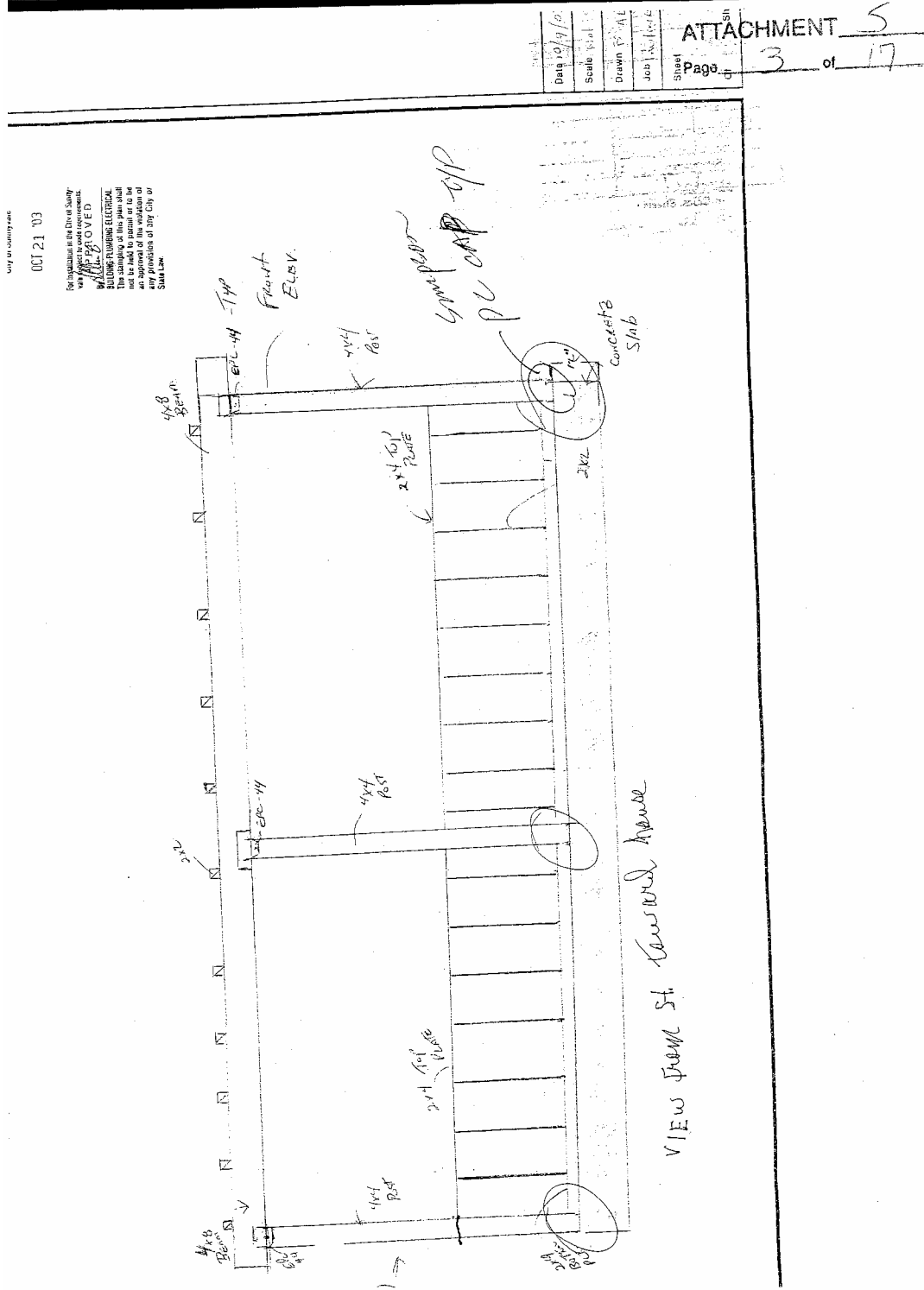
cc: clients



ATTACHMENT 5  
Page 2 of 17

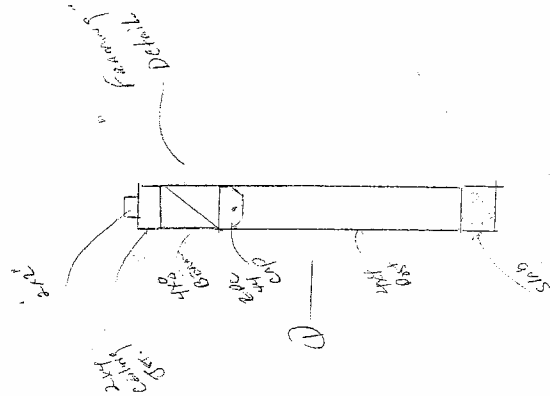
**EXHIBIT "A"**

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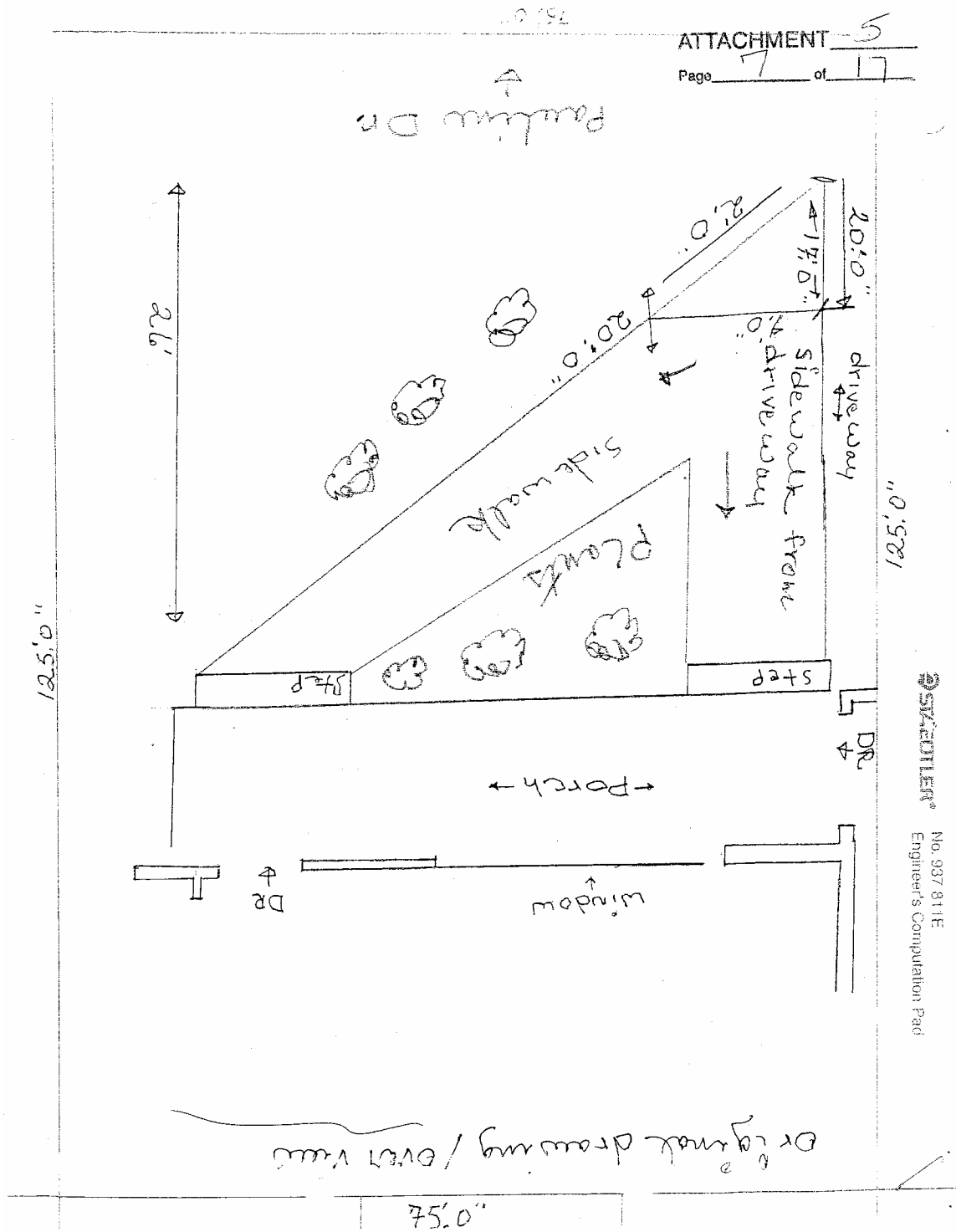
ATTACHMENT 5  
Page 5 of 17



ATTACHMENT 5  
Page 6 of 17

**EXHIBIT "B"**

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ATTACHMENT 5  
Page 8 of 17

**EXHIBIT "C"**

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# 2004-0330 Martin and Sally Hudson



DEPARTMENT OF COMMUNITY DEVELOPMENT  
BUILDING DIVISION  
456 W. OLIVE AVENUE  
SUNNYVALE, CA 94086-3707  
(408) 730-7444

## INSPECTION PHONE NUMBERS

BUILDING: (408) 730-7790  
FIRE: (408) 730-7652

ATTACHMENT 5  
Page 9 of 17

### NOTICE:

THIS PERMIT BECOMES NULL AND VOID IF WORK IS NOT COMMENCED WITHIN 180 DAYS FROM DATE OF ISSUANCE, OR IF WORK IS SUSPENDED AT ANY TIME FOR MORE THAN 180 DAYS OR IF WORK IS DONE IN VIOLATION OF ANY CITY OR STATE LAWS RELATING THERETO.

PLEASE USE THIS PROJECT NUMBER WHEN MAKING INQUIRIES OR REQUESTING INSPECTIONS

PROJECT DESCRIPTION DD TRELLIS @ FRONT PORCH		BLDG. I.D. R: 50965 Check: 0420		PROJECT NO. 2003-3504	
PROJECT ADDRESS 351 PAULINE DR		ISSUED DATE 10/21/2003		ISSUED BY DK	
NET TYPE Residential	STRUCTURE DESCRIPTION 1 Family	FEES			
ZONE R0	DCC. GRP. R0	Description			
CLASS R0	VALUATION \$500	Amount			
FLOORS 0	UNITS 0	Issue Fee \$20.00			
		Building Permit \$25.66			
		Plan Check \$17.96			
		Total Paid \$63.62			
		10/21/03 10:42am			

Hudson Martin V And Burrows-Hudson Sarah  
1351 Pauline Dr  
Sunnyvale CA 94087-3525

### LICENSED CONTRACTORS DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

Licensee Class: \_\_\_\_\_ License Number: \_\_\_\_\_  
Date: \_\_\_\_\_ Contractor: \_\_\_\_\_

### OWNER-BUILDER DECLARATION

I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7004, Business and Professions Code). The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale, if however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.

I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7004, Business and Professions Code). The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the Contractors License Law.

I am exempt under Sec. \_\_\_\_\_ B & P.C. for this reason: \_\_\_\_\_

### WORKERS' COMPENSATION DECLARATION

I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain workers compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are: CARRIER: \_\_\_\_\_

POLICY: \_\_\_\_\_

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

DATE: \_\_\_\_\_ APPLICANT: \_\_\_\_\_  
WARNING: Failure to secure workers' compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines up to one hundred thousand dollars (\$100,000), in addition to the cost of compensation, damages as provided for in Section 3706 of the Labor Code, interest, and attorney's fees.

### CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name: \_\_\_\_\_  
Lender's Address: \_\_\_\_\_

PAID

OCT 21 2003

CITY OF SUNNYVALE  
COMMUNITY DEVELOPMENT DEPT.  
CONSTRUCTION DIVISION  
7AM - 6PM M-F  
8AM - 5PM SAT  
NO WORK ON HOLIDAYS/SUNDAY

I understand that per Sunnyvale Municipal Code Chapter 8.16 all solid waste collection must be performed by the City's franchised collector.

To arrange service, call 734-2330

\* AIR3205A \*

- 1) Are hazard materials on site? Yes \_\_\_\_\_ No \_\_\_\_\_
- 2) Is project within 1000 ft. of school? Yes \_\_\_\_\_ No \_\_\_\_\_
- 3) Has Air Quality Board been notified? Yes \_\_\_\_\_ No \_\_\_\_\_

\*\* CLEARANCE FROM BOARD  
REQUIRED BEFORE FINAL INSPECTION \*\*

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above mentioned property for inspection purposes.

APPLICANT SIGNATURE: Martin Hudson DATE: 10/21/03

APPLICANT NAME: MARTIN HUDSON

ADDRESS: 1351 PAULINE DR

SUNNYVALE, CA 94087

TELEPHONE: 732-1893

REV. 11/95





# CITY OF SUNNYVALE CONSTRUCTION PERMIT

BUILDING SAFETY DIVISION,  
COMMUNITY DEVELOPMENT DEPARTMENT

ON-LINE BUILDING INSPECTION SCHEDULING  
[www.e-onestop.net](http://www.e-onestop.net)

OFFICE - (408) 730-7444

BUILDING INSPECTIONS - (408) 730-7790

FIRE INSPECTIONS - (408) 730-7652

BUILDING INSPECTION REQUEST

730-7790

REQUESTS WILL BE TAKEN

UNTIL 4:30 P.M. ONLY

THIS CARD MUST BE KEPT DISPLAYED IN A CONSPICUOUS PLACE ON OR IN  
THE BUILDING WHERE IT CAN BE READILY SEEN BY THE INSPECTORS.

INSPECTIONS MUST BE SCHEDULED AND PERFORMED AS REQUIRED BY THE  
MUNICIPAL CODE ADOPTED BY THE CITY OF SUNNYVALE.

DO NOT POUR CONCRETE UNTIL THE FIRST INSPECTION HAS BEEN MADE.

FIRE SPRINKLER JOB CARD MUST BE ON THE JOB SITE PRIOR TO  
T-BAR, FRAMING, OR CEILING CLOSURE INSPECTION.

THIS PERMIT BECOMES NULL AND VOID IF WORK IS NOT COMMENCED AND  
AN INSPECTION PERFORMED WITHIN 180 DAYS FROM THE DATE OF  
ISSUANCE, OR IF WORK IS SUSPENDED FOR MORE THAN 180 DAYS, OR IF  
WORK IS DONE IN VIOLATION OF ANY CITY OR STATE LAW RELATING HERETO.

BUILDING PROJECT NO.: 2003-3504

LOCATION: 1351 PAULINE DR

PERMITS ISSUED: 2

DESCRIPTION: ADD TRELLIS & FRONT PORCH

VALUE: \$500

ISSUED TO: MARTIN HUDSON  
1351 PAULINE DR  
SUNNYVALE, CA 94087  
732-1893

CONSTR. TYPE: Remodel OCCUPANCY:

DATE ISSUED: 10/21/03

ISSUED BY: *[Signature]*

When properly signed this card is a  
**CERTIFICATE OF OCCUPANCY**  
The building must not be occupied until a final  
building inspection is scheduled and certified below.

Department	Date	Approved by
Public Works		
Public Safety/Fire		
Other		
<b>BUILDING INSPECTION FINAL:</b>		
Date:	Inspector:	

THIS PERMIT EXPIRES 180 DAYS PAST THE LAST INSPECTION.

ATTACHMENT 5

Page 10 of 17  
INSPECTION RECORD

	DATE	INSPECTOR	COMMENTS
FOUNDATION			
SETBACKS			
STEEL			
SLAB			
PIER BLOCKS			
COLUMNS			
MASONRY STEEL			
HO/S/STRAPS/ANCHORS			
ELECTRICAL			
UNDERGROUND			
ROUGH			
TEMP SERVICE			
METER RELEASE			
BONDING			
GD ELECTRODE			
ABOVE T-BAR			
GENERATOR TEST			
PLUMBING			
STORM LINE			
SEWER			
WATER SERVICE			
UNDERFLOOR			
ROUGH			
TOP OUT			
SHOWER PAN			
GAS TEST			
ABOVE T-BAR			
PROCESS PIPING			
MECHANICAL			
ROUGH			
UNDERFLOOR			
DUCTS			
FLUES			
FURN/BOILER			
COMBUSTION AIR			
A/C UNITS			
CONDENSATE			
HOODS			
ABOVE T-BAR			
HVAC SMOKE TEST			
FIRE DAMPER			
STRUCTURE			
UNDER FL FRAME			
INSULATION			
INT. SHEAR WALL			
EXT. SHEAR WALL			
HO/S/STRAPS			
FRAMING			
ROOF NAIL			
TRUSSES			
FLOOR NAIL			
T-BAR			
EXT. SHEATHING			
HO/S/STRAPS			
ROOFING			
TEAR OFF			
IN-PROGRESS			
POOLS			
PRE-GUNITE			
PRE-PLASTER			
FINISH			
GREEN BOARD			
RATED DRY WALL			
EXTERIOR LATH			
TILE LATH			
SMOKE DETECTORS			
STREET ADDRESS			

ATTACHMENT 5  
Page 11 of 17

City of Sunnyvale  
456 W Olive Av.  
Sunnyvale, CA 94086  
(408) 730-7444  
10-21-2003 10:42 AM

Building 2003-3504

Issue Fee

Building Permit

Plan Check

**Total**

Check

Check #: 0420

Receipt: 58965

20.00

25.66

17.96

**\$63.62**

63.62

Cashier: LR

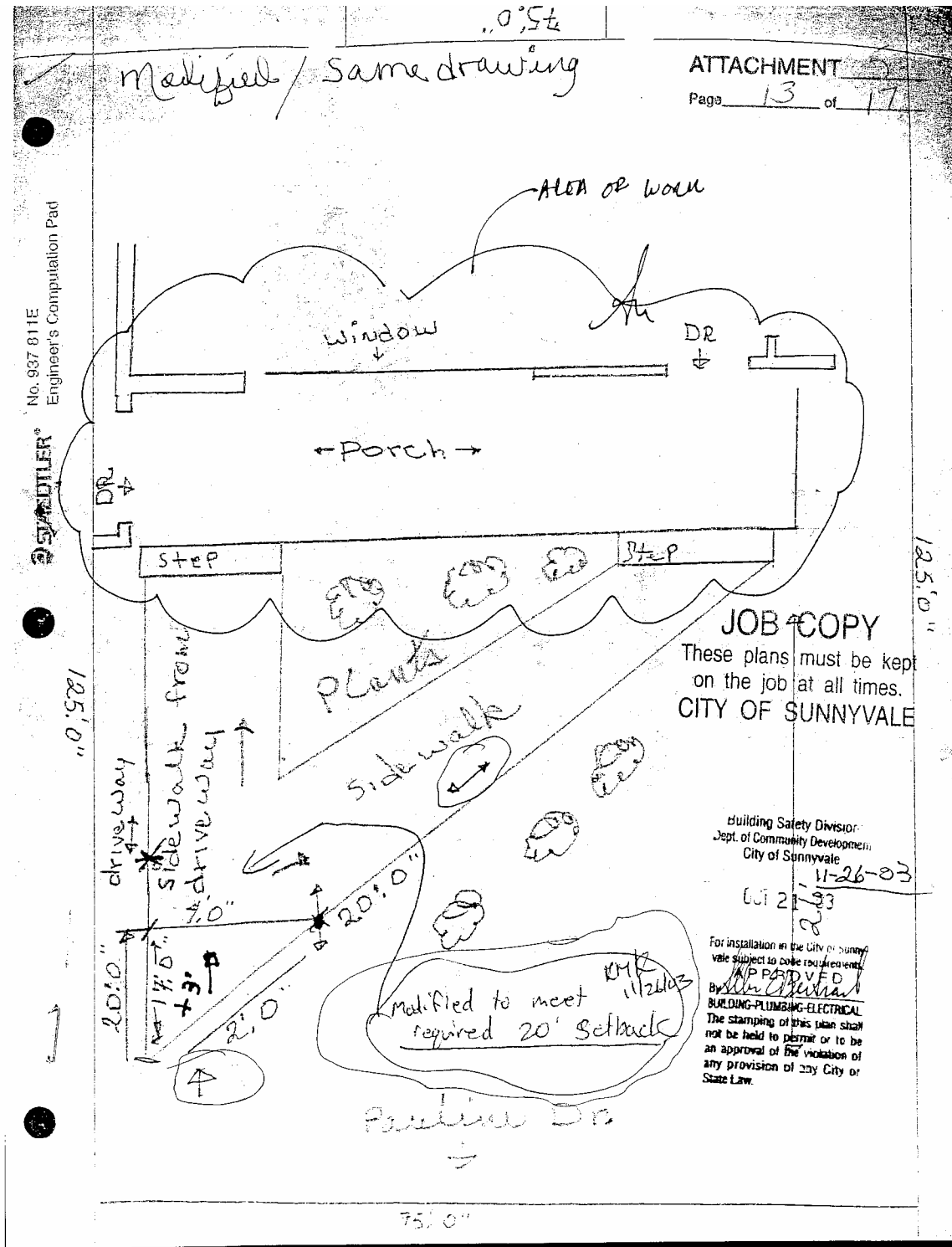
THANK YOU  
YOUR RECEIPT  
NO  
TIME 09:44 AM  
NO. 00987  
CHECK  
TOTAL  
PC FEE  
BLDG  
PLUMBER  
FEE  
PLUMBER

DATE 10/21/2003 TIME

CITY OF  
SUNNYVALE  
COMMUNITY DEVELOPMENT

ATTACHMENT 5  
Page 12 of 17

**EXHIBIT "D"**



ATTACHMENT 5  
Page 14 of 17

**EXHIBIT "E"**

**JOB COPY**

These plans must be kept  
on the job at all times.

CITY OF SUNNYVALE

*12/1/03  
Final  
OK*

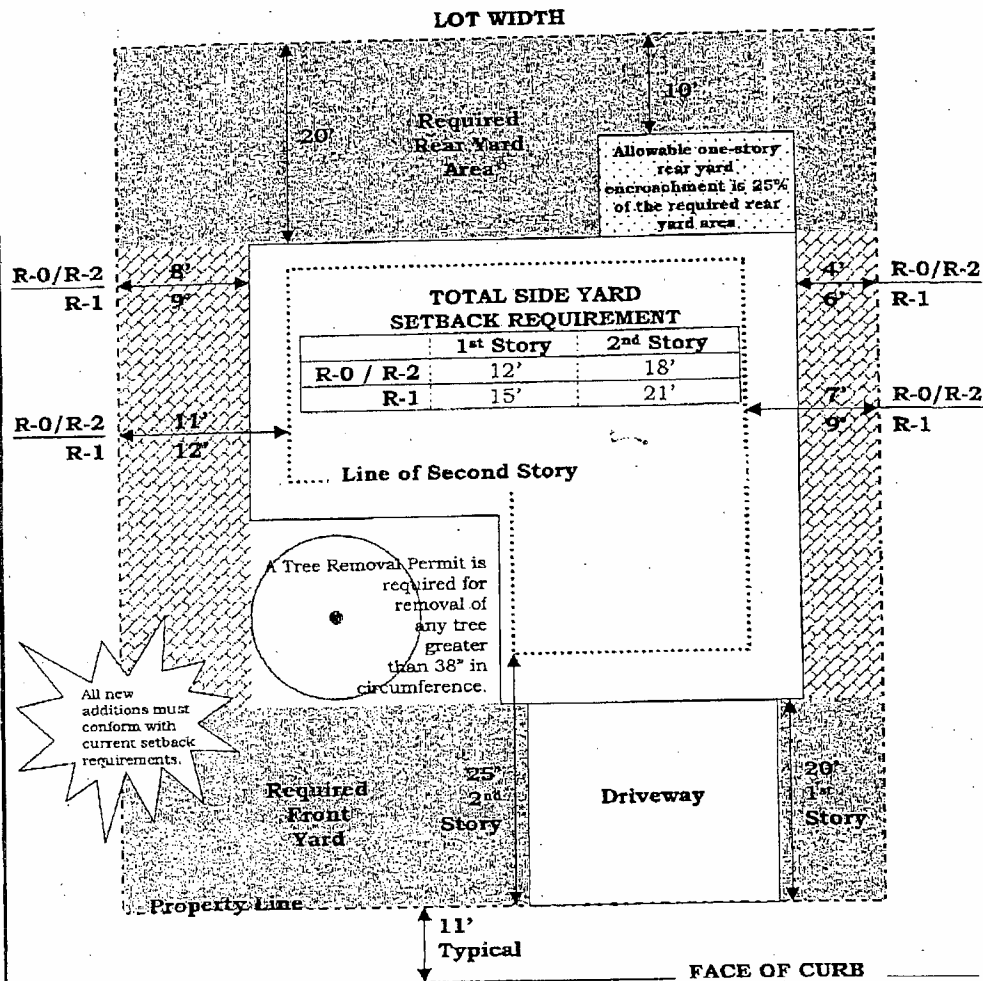
Project # <u>2003-3504</u>		Revision #	
Address <u>1351 DAVINE DR</u>		Coordinator <u>DN</u>	
Received Date		Occupancy Type	
Due Date		Construction Type	
Final Date			
DIVISION	CLEAR	HOLD	INITIALS
Planning	<u>10-20-03</u>		<u>SL</u>
Public Works			
Fire Prevention			
Hazardous Materials			
Structural	<u>2-1-03</u>		<u>JP</u>
Water Pollution	<u>10/21/02</u>		<u>HR</u>
Building			
Drawing :			
Calcs. Sheets :			

ATTACHMENT 5  
Page 16 of 17

**EXHIBIT "F"**

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# **SETBACK AND ZONING REQUIREMENTS FOR THE R-0, R-1 and R-2 Zoning Districts**



- **Maximum Lot Coverage** = 45% - 1 story and 40% - 2 story. Lot Coverage includes enclosed and unenclosed roofed patios.
- **Floor Area Ratios (FARs)** above the following percentages and square footage require a Planning Commission Hearing.  
R-0, R-1 and R-2: 45% or 4,050 sq. ft., whichever is less.  
R-2 Duplex or Multi-Unit: 55% or 4,050 sq. ft., whichever is less.  
Floor Area includes both living area and garage area. Basements which are no more than 2 ft. above grade are not included as floor area. FAR is the ratio of the house size to the lot size.  
*See Other Side for More Requirements*



ATTACHMENT 60  
Page 1 of 8

Submitted for inclusion in the record of application for variance regarding setback at 1351 Pauline, Avenue, Sunnyvale Ca.

June 21, 2004

The e-mails attached document the time line of my inquires and city responses from October 8, 2003 to date. The significant items which I would like to point out are:

- 10/08/2003, the date of the first inquiry, at which time the structure was complete or substantially complete,
- 11/21/2003, e-mail from Mr. Fred Bell, Principal Planner, for the City of Sunnyvale, stated "I am researching the details". We also arranged a meeting held on 11/25/2003 where the details were discussed with, Mr. Bell, myself and another interested party.
- 1/06/2004, e-mail from Mr. Fred Bell advised "Community Development and Public Works staff are working with the property owner to clarify the setback issue that you and I met to discuss"
- 02/12, 2004 e-mail from Mr. Bell sent the following message "

Greetings

The structure in question was approved at the counter as part of the Building Permit process; consequently, there is no file. The situation has not been fully resolved and staff continues to work with the property owner. If you would like a more detailed update, please feel free to call Steve Lynch at (408) 730-730-2723.

Thanks

Fred Bell

Principal Planner

- 02/12/2004, my e-mail to Mr. Lynch in response to Mr. Bell' e-mail of 2/12/2004, replied:

"As you will note from comparison of the permit date for the project, my original complaint was made prior to granting the permit"

Sincerely,  
Jim Seymour  
1381 Arleen Avenue  
Sunnyvale, CA

Partial Record of e-mails 10/08/2003 to date, concerning 1351 Pauline Avenue./

-----Original Message-----

**From:** Steve Lynch [mailto:SLynch@ci.sunnyvale.ca.us]  
**Sent:** Thursday, May 27, 2004 9:48 AM  
**To:** Christine Cannizzo; Seymour, James, Mr,  
**Subject:** RE: FW: FW: FW: Set back question re. violation

Jim,

Sorry for the delay, this application has been assigned to Chris Cannizzo, Assistant Planner. Chris and I have met to discuss the project, so she knows the full history. The application was reviewed by the Project Review Committee and is being scheduled for a public hearing (Administrative Hearing). Chris can let you know the exact date for this hearing next month as well as staff's recommendation.

Steve Lynch, AICP  
Associate Planner  
City of Sunnyvale  
(408) 730-2723

>>> "Seymour, James

I realize you may be out of the loop at this point, however it has been nearly 4 weeks since our last communication, and I have not received any notice of hearing ou about the appointment of your substitute.

Can you look into this and let me know the status??

jms

-----Original Message-----

**From:** Seymour, James,  
**Sent:** Friday, April 30, 2004 3:08 PM  
**To:** 'Steve Lynch'  
**Cc:** 'juliacitycouncil@aol.com'  
**Subject:** RE: FW: FW: FW: Set back question re. violation

Thanks Steve

You have been very reasonable, in my opinion. This should stand or fall on the facts, it is not personal. Rules are rules or there is no rule.

You have my vote.

Jim Seymour  
1381 Arleen Ave.  
Sunnyvale, Ca.

ps

I have copied Council member Miller, as I have observed over the years, that she is a fan of order over chaos.

jms

-----Original Message-----

**From:** Steve Lynch [mailto:slynch@ci.sunnyvale.ca.us]

**Sent:** Friday, April 30, 2004 2:54 PM

**To:** Seymour, James

**Subject:** Set back question re. violation

James,

They applied for a Variance. A planner has not yet been assigned this project, which I was waiting for before I contacted you regarding the status. When the planner is assigned, I will forward you their contact info.

Sorry we are sort of giving you the "pinball effect" by switching planners on you again. The applicant's attorney wrote a letter to our attorney stating that they wished no further contact from me. They felt I was being too aggressive and was "harassing Mr. Hudson." The implication was that any further contact from me would result in a restraining order. So, I am off the case and another planner will take the lead. I will let you know ASAP.

Steve Lynch, AICP  
Associate Planner  
City of Sunnyvale  
(408) 730-2723

>>> "Seymour, James, > 4/30/2004 2:20:05 PM >>>  
Steve

What did they decide to do?

jms

-----Original Message-----

**From:** Steve Lynch [mailto:slynch@ci.sunnyvale.ca.us]

**Sent:** Friday, March 12, 2004 1:21 PM

**To:** Seymour, James,

**Subject:** Re: FW: FW: FW: FW: Set back question re. violation

James,

Here is the latest update to the 1351 Pauline Dr. trellis situation.

Both attorneys have been writing letters and discussing the matter by phone on several occasions. The City attorney has come to the conclusion that the structure must comply with City Code. The applicant appears to have two choices in order to make the trellis comply. First he can cut the structure back to meet the required 20' front setback, or second, he can apply for a variance to ask for relief from the City Code. The applicant has 30 days to comply with this decision. (April 12th)

I will keep you posted as events unfold.

Steve Lynch, AICP  
Associate Planner

ATTACHMENT 6

Page 4 of 8

City of Sunnyvale  
(408) 730-2723

>>> "Seymour, James, I> 2/12/2004 1:09:44 PM >>>  
Steve

Thanks for listening

As discussed today, below is the-mail correspondence on this issue.

As you will note from comparison of the permit date for the project, my original complaint was made prior to granting the permit

Jim Seymour  
650-

-----Original Message-----

**From:** Fred Bell [mailto:fbell@ci.sunnyvale.ca.us]  
**Sent:** Thursday, February 12, 2004 8:17 AM  
**To:** Seymour, James,  
**Subject:** Re: FW: FW: Set back question re. violation

Greetings

The structure in question was approved at the counter as part of the Building Permit process; consequently, there is no file. The situation has not be fully resolved and staff continues to work with the property owner. If you would like a more detailed update, please feel free to call Steve Lynch at (408) 730-730-2723.

Thanks

Fred Bell

Principal Planner

>>> "Seymour, James " <> 2/4/04 11:12:53 AM >>>  
Fred

Any news on a hearing for the subject property? Also, I assume the file on this matter is a public record. If so I would like to review the file. Please advise.

Thanks

Jim Seymour

-----Original Message-----

**From:** Seymour, James,  
**Sent:** Tuesday, January 06, 2004 9:52 AM  
**To:** 'Fred Bell'  
**Subject:** RE: FW: FW: Set back question re. violation

Fred

Thanks for the update. We will proceed on Floyd by complying with full setback requirements. My primary concern is maintaining property values in this neighborhood and the city in general. I believe the Community Development Department has made good progress in defining guidelines/regulations and to a lesser extent enforcing them. Unless the regulations are uniformly enforced their value and the interests of property owners in the city are diminished.

ATTACHMENT 6

Page 5 of 8

In the event there is a variance hearing on the subject property, I would like to be advised, so that I and other neighbors may attend. I realize notice normally only goes to adjacent neighbors.

Thanks again

Jim Seymour

-----Original Message-----

**From:** Fred Bell [mailto:fbell@ci.sunnyvale.ca.us]

**Sent:** Tuesday, January 06, 2004 8:41 AM

**To:** Seymour, James

**Subject:** Re: FW: FW: Set back question re. violation

Greetings;

Please be advised that Community Development and Public Works staff are working with the property owner to clarify the setback issue that you and I met to discuss. The outcome will determine whether the addition is or is not encroaching into the right-of-way. If it is, the owner may request a Variance which may or may not be approved based on the merits of the situation. If it is encroaching and a Variance is not granted, the encroachment must be removed.

Of course, your new project on Floyd has exactly the same options; but, as we discussed, staff recommends that all required setbacks be maintained as the Findings needed for approval of a Variance are difficult to make.

I would be happy to look at your preliminary design on the Floyd project if you would like. Please feel free to call me (408) 730-7443 or e-mail if you would like to set a meeting.

Fred Bell

Principal Planner

>>> "Seymour, James, Mr, " > 12/29/03 11:07AM >>>

Fred

I am interested in receiving a status report on the issue cited above. We are getting ready to make a submission to planning for XXXX XXXX and still want to know what our options are. Since there is no change in the status of the Pauline Avenue property, I presume they are holding out hope that a favorable interpretation to building in the set back area is possible. Please advise.

thanks

jms

-----Original Message-----

**From:** Seymour, James, Mr,

**Sent:** Monday, November 24, 2003 9:47 AM

**To:** 'Fred Bell'

**Subject:** RE: FW: Set back question re. violation

Fred

Thanks, 3 pm is fine.

If any change or questions my work number is 650  
home is 409

jms

-----Original Message-----

**From:** Fred Bell [mailto:fbell@ci.sunnyvale.ca.us]

**Sent:** Monday, November 24, 2003 9:42 AM  
**To:** Seymour, James, Mr,  
**Subject:** RE: FW: Set back question re. violation

Good Morning;  
I am available Tuesday (11-25-03) for a meeting if you would like; say around 3:00 pm? Please let me know if this day and time are convenient for you. My phone number is (408) 730-7443.

>>> "Seymour, James, Mr, [REDACTED] 11/21/03 09:49AM >>>  
Hi Fred

Yes, I will be in town.

The owner of the prospective Floyd Avenue project and I planned to come to planning next Tuesday afternoon to discuss his project. Perhaps we could arrange an appointment.

Thanks

jms

-----Original Message-----

**From:** Fred Bell [mailto:fbell@ci.sunnyvale.ca.us]  
**Sent:** Friday, November 21, 2003 9:05 AM  
**To:** Seymour, James, Mr,  
**Subject:** Re: FW: Set back question re. violation

Greetings;  
Your e-mail has come to me and I am researching the details for both the Arleen and Pauline addresses. I expect to have everything assembled next week and would like to call you to discuss your concerns. Are you going to be in town next week? Is there a phone number where you can be reached; or, would you prefer to meet with me?  
Please respond at your convenience and we work together from there.  
Fred Bell  
Principal Planner  
(408) 730-7443

>>> "Seymour, James, Mr, [REDACTED] 11/20/03 01:55PM >>>  
Patti

Remember me? We talked this morning regarding my inquiry/complaint regarding 1351 Pauline Ave. in Sunnyvale (by the way according to the City website, this address is not in Sunnyvale) .

I am not suggesting (yet) that I am getting the run around, but this does feel like a bit circular.

Is the ball back in your court or???

Please help

jms

-----Original Message-----

**From:** Robert Staley [mailto:rstaley@ci.sunnyvale.ca.us]  
**Sent:** Thursday, November 20, 2003 1:17 PM

ATTACHMENT 6  
Page 7 of 8

**To:** Seymour, James, Mr,  
**Subject:** RE: Set back question re. violation

You may contact Patti Kielty at (408) 730-7579 or at [pkielty@ci.sunnyvale.ca.us](mailto:pkielty@ci.sunnyvale.ca.us)

Robert Staley Sr.  
Neighborhood Preservation Specialist  
CDD  
408-730-7442

>>> "Seymour, James, Mr, [REDACTED] 11/20/03 01:09PM >>>  
Robert

Can you provide a name and e-mail address in the building division so that I may forward this record of e-mails??

-----Original Message-----

**From:** Robert Staley [mailto:[rstaley@ci.sunnyvale.ca.us](mailto:rstaley@ci.sunnyvale.ca.us)]  
**Sent:** Thursday, November 20, 2003 12:57 PM  
**To:** Seymour, James, Mr,  
**Subject:** RE: Set back question re. violation

Mr. Seymour:

You will have to contact the Building Division at (408) 730-7444 in answer to your question. If I can be of further assistance please let me know.

Robert Staley Sr.  
Neighborhood Preservation Specialist  
CDD  
408-730-7442

>>> "Seymour, James, Mr, " [REDACTED] 11/20/03 12:39PM >>>  
Robert

Yes it is the "trellis", roof extention and deck that is the subject of my complaint. One street over at 1381 Arleen Ave.(buliding permit no. 1999-2260) with identical setbacks I was not allowed to add a single post in front of my structure. There was considerable cost involved as a result of redesign to indent into the existing structure to cover the porch. I am concerned that some special interpretation has been made for 1351 Pauline, that was not made available to me at 1381 Arleen. I would like to obtain the rationale used to grant the apparent variance from the set back requirement. I am currently involved in a project on Floyd Ave.with identical setbacks and want to know my full options in designing the remodel. If I can obtain the exception by which the Pauline address received the apparent variance it would be very helpful.

Thanks

jms

ATTACHMENT 6  
Page 8 of 8

-----Original Message-----

**From:** Robert Staley [mailto:rstaley@ci.sunnyvale.ca.us]

**Sent:** Thursday, November 20, 2003 12:24 PM

**To:** Seymour, James, Mr,

**Subject:** Re: Set back question re. violation

Dear Mr. Seymour:

I want to make sure I have the correct address as 1351 Pauline? Also is this a trellis structure being added onto the front porch that you are inquiring about? If this is in reference to that trellis structure there is a current open Building Permit on file. Please let me know. I can also be reached at (408) 730-7442.

Robert Staley Sr.  
Neighborhood Preservation Specialist  
CDD  
408-730-7442

>>> "Seymour, James, Mr, "[REDACTED]" 10/08/03 03:38PM >>>

To whom it may concern:

At 1351 Pauline Ave in Sunnyvale, a covered deck is under construction, near completion, inside the front setback requirement. I was not allowed to put so much as a post within that setback when I applied for a permit. Why the different treatment? I live on the next street over with identical setback requirements.

Please advise.

Thanks  
Jim Seymour